In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 249

THE UNITED STATES OF AMERICA, *Petitioner*

v.

FREDERICK M. WATERBURY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment entered in this case on April 15, 1952, by the United States Court of Claims.

OPINION BELOW

The opinion of the Court of Claims (R. 8-12) is not reported.

JURISDICTION

The judgment of the Court of Claims was entered on April 15, 1952 (R. 20). Respondent's

motion to amend the judgment was denied on May 6, 1952 (R. 20-21). The jurisdiction of this Court is invoked under 28 U. S. C. 1255.

QUESTION PRESENTED

Whether service in the militia before 1916 constitutes service in the "federally recognized National Guard" for the purpose of determining retired pay under Title III of the Army and Air Force Vitalization and Retirement Equalization Act of 1948.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutory provisions and regulations are set forth in the Appendix to the petition for a writ of certiorari in *United States* v. *Price*, No. 248, this Term.

STATEMENT

Respondent was a member of the New York National Guard until May 1, 1932. He applied for retirement benefits under Title III of P.L. 810, 80th Cong., 2d Sess., the Army and Air Force Vitalization and Retirement Equalization Act, Act of June 29, 1948, 62 Stat. 1081, 1087 (R. 7, 11), which for computing the required twenty years of federal service for retirement purposes authorized the inclusion of service in the federally-recognized National Guard prior to 1933. He did not have the requisite twenty years of Federal service unless his service as an officer

in the New York National Guard prior to June 3, 1916 was includible. The Adjutant General, Department of the Army, rejected his claim on the ground that National Guard service prior to June 3, 1916, the date of enactment of the National Defense Act, 39 Stat. 166, could not be credited for retirement purposes, because it was not federal service within the meaning of the 1948 Act (R. 7, 11). Respondent thereupon brought suit in the Court of Claims which held on the stipulated facts in an opinion rendered October 2, 1951, Judge Madden dissenting (R. 12) in the *William G. Price, Jr.* suit [which it was stipulated would govern the instant suit] that service after the passage of the Dick Act of 1903, 32 Stat. 775,[1] counted as federally-recognized National Guard service for purposes of retirement under the 1948 Act (R. 8-12). After receipt of the report of the General Accounting Office showing the amount due on the basis of the court's opinion, judgment was entered in favor of respondent for $4,106.93 on April 15, 1952 (R. 20). Respondent's motion to amend the judgment was denied on May 6, 1952 (R. 20-21).

REASONS FOR GRANTING THE WRIT

In this case, as in *United States* v. *Price,* No. 248, this Term, presenting the same question and now pending on petition for a writ of

[1] No claim was made for service in the National Guard prior to January 21, 1903, when the Dick Act was passed (R. 4, 8).

certiorari, we submit that the Court of Claims was in error in holding that the respondent was entitled to credit for service in the National Guard prior to June 3, 1916. The reasons for granting the writ in this case are identical with those set forth in the petition for certiorari in the *Price* case, to which the attention of the Court is respectfully invited.

CONCLUSION

For the reasons set forth in the *Price* case, it is respectfully submitted that this petition for a writ of certiorari should also be granted.

PHILIP B. PERLMAN
Solicitor General

AUGUST 1952.

☆ U.S. GOVERNMENT PRINTING OFFICE 1952—217906/P.O.172

17

No. 249

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

THE UNITED STATES OF AMERICA, *Petitioner*,

v.

FREDERICK M. WATERBURY.

On Petition for a Writ of Certiorari to The United States Court of Claims

---

BRIEF FOR RESPONDENT IN OPPOSITION

SAMUEL T. ANSELL,
712 Tower Building,
Washington 5, D. C.
Counsel for Respondent

Of Counsel:
ANSELL AND ANSELL

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

Question Presented and Statutes Involved

The question presented and the statutes involved here are as stated in respondent's brief in opposition to the petition for a writ of certiorari in *United States* v. *Price*, No. 248, this Term.

Statement

It was stipulated in the Court of Claims that the decision in the case of *William G. Price, Jr.*, should govern this case and judgment was ordered in favor of respondent for $4,106.93 on April 15, 1952. The facts and law upon which the judgment rests in this case generally correspond to those in the *Price* case, now pending before this Court upon petition for writ of certiorari, No. 248, this Term.

Reasons for Opposing the Granting of the Writ

The reasons for opposing the writ in the *Price* case are essentially those the respondent makes in this case. We respectfully ask that they be adopted in this case.

Conclusion

It is respectfully submitted that, for the reasons set forth in opposition to the writ in the *Price* case, the petition for the writ of certiorari in this case should not be granted.

SAMUEL T. ANSELL,
712 Tower Building,
Washington 5, D. C.
Counsel for Respondent

Of Counsel:
ANSELL AND ANSELL

September 27, 1952.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 249

THE UNITED STATES OF AMERICA, *Petitioner*,

v.

FREDERICK M. WATERBURY.

On Petition for a Writ of Certiorari to The United States Court of Claims

---

BRIEF FOR RESPONDENT IN OPPOSITION

Opinion Below

The opinion of the Court of Claims (R. 8-12) is not reported.

Jurisdiction

The jurisdiction of this Court is as stated in the Petition (pp. 1-2).